

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Joseph Bey, Jr.,
Petitioner, Plaintiff,

vs.

United States of America,
Respondent, Defendant,

Criminal No. 96-10178-REK

JUDICIAL NOTICE PURSUANT TO FEDERAL RULES OF EVIDENCE RULE 201

Now Comes Joseph Bey, Jr., proceeding In propria persona, in the above styled action and numbered cause, to be referred herein after as "Petitioner," respectfully moving this most honorable court to take Judicial Notice of this particularized motion for reservation of rights to argue the holdings delineated under United States v. Booker, 534 U.S. __, 125 S.Ct. 738, 160 L.Ed 2d 621 (2005) (Quoting Blakely v. Washington, __, U.S. __, 124 S.Ct. 2531, 159 L.Ed 2d 403 (2004)). Both the Blakely and Booker Courts reasoned that criminal culpability at sentencing should be based only on facts either admitted in a guilty plea or found by a jury determination beyond a reasonable doubt, to conform with the Sixth Amendment principles and protections.

This motion comes before this Court in the pro se forum,¹ in an effort to preserve petitioner's right to argue and assert the Sixth Amendment implications if and when the Supreme Court considers Booker, to have retroactive effect. The Supreme Court has not yet held Booker to apply to cases on collateral review, but shortly after Booker was decided the Supreme Court decided Dodd v. United States, 545 U.S. ___, 162 L. Ed 2d 343, 125 S.Ct. ___ (2005). In Dodd, it was held that the 1-year limitation period under ¶ 6 (3) of Section 2255 "begins to run on the

¹ See Haines v. Kerner, 404 U.S. 519, 30 L.Ed 2d 652, 92 S.Ct. 594 (1972)

date on which this Court ‘initially recognized’ the right asserted in applicant’s motion, not the date on which that right was made retroactive. The text of ¶ 6 (3) unequivocally identifies one, and only one, date from which the limitation period is measured: “the date on which the right asserted was initially recognized by the Supreme Court.””

CONCLUSION

Because on the potential that the Supreme Court may eventually make a retroactive application of the Booker decision, this pleading comes before the Court accordingly, to demand the Court take Judicial Notice, that he is reserving his rights to argue the holdings articulated in Booker if and when they are made retroactive or available to him to avoid a miscarriage of justice.

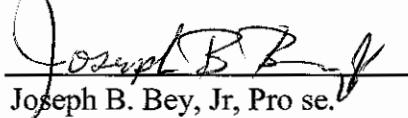
Sincerely and Respectfully,


Joseph Bey, Jr., Pro se.
No. 21146-038
F.M.C. Devens, Box 879
Ayer, MA. 01432

CERTIFICATE OF SERVICE

I Joseph Bey, Jr. do hereby affirm and attest that I have mailed a copy of the attached motion to the Office of the U.S. Attorney, For the District of Massachusetts, at One Courthouse Way, Boston, Massachusetts 02210, by first class pre paid mail on this 9th day of January 2006.

Signed pursuant to the provisions of 28 U.S.C. § 1746.


Joseph B. Bey, Jr, Pro se.
Reg. No. 21146-038
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Ayer, MA. 02134

Cc: JBJ/me
AUSA